



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/153086

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on December 17, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the county agency correctly determined the value of the petitioner's residence and that he was ineligible for medical assistance for 50 days because of a divestment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Steve Tilbury

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner quitclaimed her homestead property located on [REDACTED] [REDACTED] in [REDACTED] [REDACTED], Wisconsin, to various relatives in 1997 and retained a life estate.
3. The petitioner's house was appraised on July 14, 2013 by [REDACTED] [REDACTED], a certified real estate appraiser, at \$74,000. This appraisal was accepted by RCU, the financial institution that loaned money to the buyer of the house.
4. The petitioner's house was sold on August 28, 2013, for \$55,000.
5. When the house was sold, the petitioner was 92 years old.
6. The county agency found the petitioner ineligible for medical assistance from August 1, 2013, until September 20, 2013, because of the alleged divestment. It used the property tax assessment to determine that the house was worth \$82,200.

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years of the later of when she was institutionalized and applied for medical assistance. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f). A life estate is not considered an asset, but the proceeds from the sale of a life estate are. Wis. Admin. Code, § DHS 103.06(6). A person who terminates her life interest in a property without receiving the value of the life estate commits a divestment. *Medicaid Eligibility Handbook*, 17.10.1. The value of a life estate is determined by multiplying the entire value of the property by a fraction that depends upon the person's age when the life estate is divested. *Id.*

If a person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private-pay patient in a nursing home at the time she applied. Wis. Adm. Code, § DHS 103.065(5)(b). Beginning on January 1, 2009, county agencies were instructed to use the average daily cost of care and determine ineligibility to the day rather than to the month. The daily amount is currently \$243.49 *Medicaid Eligibility Handbook*, § 17.5.2.2.

The county agency contends that the house the petitioner lived in was worth \$82,200, a figure it based upon the appraisal used to determine her property taxes. A professional appraiser did an appraisal for the buyer of the house and determined it was worth \$74,000. The house was sold for \$55,000. The petitioner contends that the house was worth less than either appraisal because it needed a good deal of repair. I do not doubt that a 92-year-old woman has not kept up with all the repairs needed for an 87-years-old house. This would explain why the city assessment, which generally does not involve entering the house, is high. I assume that the private appraiser, whose report was accepted by the lending institution, considered these potential costs. Based upon this, I find that that appraisal accurately reflects the value of the house. There is no evidence that petitioner incurred any costs when selling her house. This means that it sold for \$19,000 less than it was worth. When multiplied by .25771, the multiplier for a life estate held by a 92-year-old person, the total divestment is \$4,896.49. Dividing this by the \$243.49 current average daily cost of a nursing home room, gives 20.11, which means that the petitioner is ineligible for medical assistance for 20 days as a result of the divestment.

CONCLUSIONS OF LAW

The petitioner is ineligible for medical assistance for 20 days because she divested assets when the house in which she held a life estate was sold for less than its fair market value.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reduce the number of days in which the petitioner is ineligible for medical assistance because of divestment from 50 to 20 and find her eligible retroactive to August 21, 2013.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

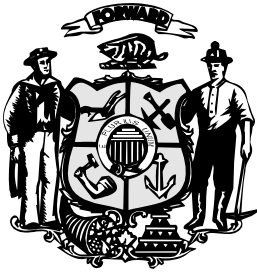
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of January, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 17, 2014.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability